

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5041 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
  2. To be referred to the Reporter or not? : YES
  3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
  5. Whether it is to be circulated to the concerned Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals? : NO

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PARSHOTTAM SHIVABHAI MAHERIYA SINCE DECEASED THROUGH HEIRS  
Versus  
STATE OF GUJARAT  
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Appearance:

1. Special Civil Application No. 5041 of 2001  
MR NIRZAR S DESAI for Petitioner No. 1-1/5  
MRS MANISHA SHAH, Ld. AGP for Respondent No. 1-3
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CORAM : MR.JUSTICE JAYANT PATEL

Date of decision: 21/01/2003

ORAL JUDGEMENT

1. Leave to add the Director, Pension and Provident Fund, as party respondent.

2. Rule. Mrs.Manisha Shah, learned AGP, waives service notice of rule on behalf of the respondents. With the consent of the parties, the matter is taken up for final hearing today.

3. The short question involved in this petition is can the amount be recovered from the employee for the period by way of refund for the period during which he had actually worked after the retirement.

4. The short facts of the case are that the original petitioner, Purshottam Shivabhai Maheriya joined the service as peon and actually retired from service on 31-5-2001. After the retirement of the original petitioner on 31-5-2001, the respondent authority issued a notice to the said Purshottam Shivabhai Maheriya that as per the birth date, he should have retired from 29-2-2000 and he ought not to have continued in service upto 31-5-2001 and, therefore, a letter dated 28-6-2001 was written by the Director, Civil Hospital to the original petitioner for recovering the amount of Rs.89,748/= and other benefits towards salary and allowances paid to the said Purshottam Shivabhai Maheriya for the period from 1-3-2000 to 31-5-2001. The said Purshottambhai had replied to the said notice and had submitted, inter alia, that he was illiterate person and in respect to the service record he had repeatedly met the concerned Officer, but he was not asked to retire prior to 31-5-2001 and, therefore, it cannot be said that the petitioner has cheated the department. It was also represented by Mr.Purshottambhai to the respondent authority that even after the retirement the pension papers are not forwarded and as a result thereof, his pension is not fixed and it is difficult to maintain the family. Thereafter, order dated 28-6-2001 is issued by the Director, Civil Hospital of modifying the order of retiring the original petitioner from 29-2-2000 in stead of 31-5-2001. Under these circumstances, the present petition is preferred by the petitioner for challenging the order of recovering the amount of salary and allowances for the period from 1-3-2000 to 31-5-2001 and of modification in the order of date of retirement as 29-2-2000 in stead of 31-5-2001. The petitioner has also prayed for the relief to give directions to the respondents to fix the pension on the basis as if the original petitioner has retired from service from 31-5-2001. It may be stated that pending the petition, the said Purshottambhai, original petitioner, who was the employee had expired and his legal heirs are brought on record as per the order dated 25-2-2002 passed in CA

No.1541/2001 and in this manner, the legal heirs or family members of the employee have persuaded the petition.

5. I have heard Mr.N.S.Desai, learned Counsel for the petitioners and Mrs.Manisha Shah, learned AGP for the respondents authorities.

6. Upon the perusal of the record and rather there is no dispute on the point that the original petitioner had actually worked as peon from 29-2-2000 to 31-5-2001 and the salary and the allowances paid to him are towards his actually working as peon in the department and, therefore, on the basis of principles of quantum meruit, the said amount cannot be recovered. In my view it would be unreasonable to recover the amount of salary and the allowances from the employee, who had otherwise worked satisfactorily for the period during which he was on duty. The fact remains that he had actually worked and the government had paid the salary and the allowances towards his working upto 31-5-2001 and it is not even the case of the respondent that the original petitioner was asked to retire from 29-2-2000 and he continued to be on duty in spite of the same. Even the perusal of the order dated 1-6-2001 shows that the petitioner retired from 31-5-2001 after office hours on reaching the age of superannuation. In my view, even if the ground mentioned in the notice for recovery is accepted, then also the same can hardly be a valid basis for recovery of the salary and the allowances from the employee concerned, who actually worked during the said period and, therefore, I am of the view that under no circumstances, order dated 28-6-2001 Annexure "A" passed by the Director for recovery of the salary and allowances for the period from 1-3-2000 to 31-5-2001 can stand in the eye of law.

7. The next aspect which is required to be examined is regarding the fixation of the pension and the relevant date for fixation of the pension. Mr.Desai has made a statement at the bar that the family members of the employee, who are petitioners herein, have no objection even if the pension is fixed on the basis of the date of retirement as 29-2-2000. In that view of the matter, it is not necessary to examine in detail the eligibility aspect for entitlement of pension and when the petitioners have fairly accepted for fixation of pension on the basis of 29-2-2000, the respondents should fix the pension accordingly, because even as per the stand of the respondents the original petitioner has legally retired from 29-2-2000.

8. In view of the above discussion, order dated 28-6-2001 Annexure "A" issued by the Director, M and J Institute of Ophthalmology, Civil Hospital, Ahmedabad is quashed and set aside. The respondents are directed to prepare the pension papers of the deceased employee namely; Purshottam Shivabhai Maheriya, on the basis of the date of retirement as of 29-2-2000 and such exercise for preparation of the pension papers to be completed within one month from the date of receipt of the writ of this Court. After the papers are forwarded to the concerned authority i.e. respondent No.3 by respondent No.2, respondent No.3 shall sanction the pension within a period of two months from the date of receipt of the proposal. After the sanction and the decision by respondent No.3, the actual amount of the pension together with arrears of pension shall be disbursed to the petitioners by "account payee" cheque within a period of 15 days from the date of decision.

9. The petition is allowed to the aforesaid extent. Rule is made absolute accordingly. No costs. Direct service is permitted.

21-1-2003. (Jayant Patel, J.)

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